

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

LUKE C. MESSER,

Plaintiff,

v.

Case No. 22-C-208

LEVI BARSKE and
ANTIGO POLICE DEPARTMENT,

Defendant.

DECISION AND ORDER GRANTING MOTION TO DISMISS

Plaintiff Luke Messer, who is currently representing himself, filed this action against Defendants Levi Barske and Antigo Police Department on February 18, 2022. On February 16, 2023, Defendants filed a motion to compel. The court granted the motion on March 10, 2023, and ordered Plaintiff to provide complete responses to Defendants' discovery requests by March 21, 2023. The court warned that failure to comply with the order may result in dismissal of the case. This matter comes before the court on Defendants' motion to dismiss pursuant to Rule 37 of the Federal Rules of Civil Procedure. Plaintiff has not responded to the motion to dismiss. For the following reasons, Defendants' motion will be granted and the case will be dismissed.

Rule 37 authorizes a court to dismiss an action in whole or in part based on the plaintiff's failure to obey an order to provide or permit discovery. Fed. R. Civ. P. 37(b)(2)(A)(v). Rule 37 sanctions are appropriate when a party displays "willfulness, bad faith or fault." *Brown v. Columbia Sussex Corp.*, 664 F.3d 182, 190 (7th Cir. 2011) (citations omitted).

In this case, Defendants served Plaintiff with discovery requests on October 4, 2022. When Plaintiff did not timely respond to the requests, Defendants' counsel sent letters to Plaintiff on

November 17, 2022, and January 19, 2023, requesting that Plaintiff promptly respond to the requests. Although Plaintiff served partial responses to the discovery requests on January 26, 2023, via email, he provided incomplete responses to the interrogatories and failed to provide any of the documentation or authorizations as requested in Defendants' requests for production of documents. On March 10, 2023, the court granted Defendants' motion to compel and ordered Plaintiff to provide complete responses to Defendants' discovery requests by March 21, 2023. Defendants assert that, to date, Plaintiff has not supplemented any further discovery materials in the case.

The court finds that Plaintiff has failed to comply with the court's March 10, 2023 order directing him to completely respond to Defendants' discovery requests. By failing to properly respond to those requests, Plaintiff has prevented Defendants from defending against Plaintiff's claims. Based on Plaintiff's failure to comply with his discovery obligations and the court's order, the court concludes that dismissal of Plaintiff's claims is the appropriate sanction for Plaintiff's conduct.

Defendants also request an award of attorney's fees and costs associated in bringing the motion. The court found that Plaintiff could not afford the filing fee for this action. Under these circumstances, an award of attorney's fees would be inappropriate. Defendants may, however, file a bill of costs pursuant to Federal Rule of Civil Procedure 54.

For these reasons, Defendants' motion to dismiss (Dkt. No. 50) is **GRANTED**. This case is dismissed. The clerk is directed to enter judgment accordingly.

SO ORDERED at Green Bay, Wisconsin this 24th day of April, 2023.

s/ William C. Griesbach
William C. Griesbach
United States District Judge